

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-10314-GAO

JOANNE GARVEY; DEVORAH BARONOFKY; and PATRICIA TYRA,
Plaintiffs

vs.

MASSACHUSETTS NURSES ASSOCIATION,
Defendant

MEMORANDUM AND ORDER

March 23, 2001

O'TOOLE, D.J.

The Board of Directors of the defendant Massachusetts Nursing Association (“MNA” or “Association”) has called a special meeting of the membership of the Association for the purpose of considering a proposed amendment to MNA’s By-Laws that would end the organization’s formal affiliation with the American Nurses Association (“ANA”). The MNA’s By-Laws currently provide that the MNA shall be a constituent member of the ANA. The special meeting is to be held at 1:00 p.m. on Saturday, March 24, 2001, at Mechanics’ Hall in Worcester.

The plaintiffs complain that, for disparate reasons, they are unable to attend the special meeting, and as a consequence they are disabled from casting a vote on the proposed By-Law

amendment.¹ They contend that, by limiting the opportunity to vote on the proposal to those members who personally attend the Worcester meeting and by refusing to permit an alternate or supplemental method of voting – such as mail ballot – that would enable absent members’ participation in the vote, the MNA denies them rights and privileges equal to those extended to other members, in violation of 29 U.S.C. § 411, which provides, in pertinent part:

(a)(1) Equal rights.

Every member of a labor organization shall have equal rights and privileges within such organization . . . to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization’s constitution and bylaws.

. . . .

(b) Invalidity of constitution and bylaws.

Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.²

¹ The action was originally brought only by plaintiff Joanne Garvey. Earlier this week an amended complaint was filed in which the plaintiffs Devorah Baronofsky and Patricia Tyra joined as plaintiffs. The defendants concede that Garvey had the right to amend without motion under Fed. R. Civ. P. 15(a), no responsive pleading having been filed, but argue that joinder of new plaintiffs requires a motion under Fed. R. Civ. P. 21. Because the claims of the new plaintiffs are so closely related to the one asserted by Garvey, I think the permission of Rule 15(a) suffices, but if leave is needed, as called for by Rule 21, I grant it. Even given the short time between the filing of the amended complaint and the hearing on the motions, the claims of the new plaintiffs were so similar to Garvey’s that the defendants were not substantially prejudiced by the amendment. In the circumstances, it was appropriate to consider Baronofsky’s and Tyra’s claims as well.

² The defendants do not dispute that the MNA is a “labor organization” to which the statute applies.

The By-Laws of the MNA contain the following provision regarding amendments:

These Bylaws may be amended by a two-thirds vote at any regular or special business meeting providing that the proposed amendment has been reviewed by the Board of Directors, that it has either been published in the official bulletin, or has been distributed to the officers and members at least 30 days prior to the business meeting.

MNA By-Laws, Art. XXII, sec. 1 (Pinkham Aff. Ex. A).

The gist of the plaintiffs' argument is that, although the amendment provision of the By-Laws ostensibly permits any member an equal right to participate in a meeting and to vote on a proposed amendment, the scheduling of this particular meeting and vote in actuality discriminates between those members who can freely attend the meeting and those, such as the plaintiffs, who for serious reasons are unable to attend. The plaintiff Garvey asserts that she, like many other nurses throughout Massachusetts, is required to be at work on Saturday, March 24, and cannot attend the meeting. She asserts that scheduling a meeting and vote during a time when an appreciable number of members of the MNA are required to be at work effectively disenfranchises them, in violation of the statute. (Am. Comp. ¶¶ 18, 19.) The plaintiff Baronofsky, a resident of Brookline, says that she is an observant Orthodox Jew who cannot attend the Saturday meeting without violating religious strictures against travel, work or other secular pursuits on the Sabbath. (Id. ¶ 20.) The plaintiff Tyra asserts that she is a resident of Martha's Vineyard, and her attendance at the meeting in Worcester would impose unequal burdens of travel and expense not imposed on other members of the MNA. (Id. ¶ 21.)

The plaintiffs have prayed for a preliminary injunction restraining the MNA from conducting a vote on the proposed By-Law amendment until the merits of their claims can be adjudicated. In addition to opposing the requested injunction, the defendants have moved to dismiss the complaint

for failure to state a claim upon which relief can be granted. A hearing was held Thursday, March 22. In light of the need for a prompt resolution of the issues presented, I provide a brief explanation of my orders in this memorandum. If the needs of the case make it appropriate, a more extended supplemental memorandum may follow.

The MNA has approximately 20,000 members, with about 18,000 belonging to its Labor Relations Program, which is concerned with employee collective bargaining issues. Historically, only a relatively small fraction of the membership has attended, or voted at, meetings of the Association. The By-Laws define the MNA's "Voting Body" as "the Board of Directors, members, and a designated representative of the organizational affiliates who have been registered as in attendance

at the meeting." (Art. XVI, sec. 4.) "A majority of the Voting Body, including five members of the Board of Directors and the MNA President or a Vice President, shall constitute a quorum." (Id. sec. 5.) The Voting Body is authorized to "take positions, determine policy, and set direction on substantive issues of a broad nature." (Id. sec. 6.)

There is nothing in these provisions that purports to treat some members unequally. All members have an equal right to attend meetings and vote on the matters presented there. Nonetheless, by-law provisions that do not discriminate between members on their face might be applied to deny some members rights and privileges granted to others. See McCafferty v. Local 254, Serv. Employees Int'l Union, 186 F.3d 52, 59 (1st Cir. 1999) (application of rule may have discriminatory effect); Molina v. Union de Trabajadores de Muelles, 762 F.2d 166, 169 (1st Cir. 1985) (uneven application of neutral rule can give rise to statutory claim).

The question here is whether MNA's requirement that members attend meetings in person in order to be eligible to cast a vote on such matters as may be duly presented to the meeting discriminates against some members in a way forbidden by § 411(a)(1). In the particular circumstances presented here, I conclude that it does.

Certainly, it is not unusual for organizations to determine fundamental issues of concern at a general membership meeting and to restrict the right to participate and vote to those members who are actually present at the meeting. There might be a wide variety of reasons why a member would not or could not attend a particular meeting, and in many cases there would be no reason for faulting the organization for any member's nonattendance.

In this particular case, however, given the "24/7" nature of a significant segment of nursing employment, such as employment at hospitals, it is to be expected that a substantial number of members will be unable to attend a general meeting *whenever it is scheduled* because the meeting will occur during normal work hours. Thus, the MNA must know that some proportion of its membership will be disabled from voting on important questions presented at *any* such meeting. In such circumstances, the personal attendance requirement inevitably and predictably excludes members whose work schedules conflict with the meeting time. While some such members may be able to change their work shifts to attend a meeting, their substitutes would themselves be unable to attend. It seems unlikely that substitutes would in all cases be nurses not interested in attending the meeting.

Some cases have concluded that scheduling meetings for times when some otherwise eligible members would be unable to attend because of work commitments does amount to a denial of equal voting rights to those members. See Wirtz v. National Maritime Union, 284 F. Supp. 47 (S.D.N.Y.

1968); Goldberg v. Marine Cooks and Stewards Union, 204 F. Supp. 844 (N.D.Cal. 1962). To be sure, the factual circumstances of maritime workers at sea seem rather more dramatic than the case of nurses working a Saturday shift, but the principle still is applicable. The union is aware when it schedules the meeting and the vote that some members will not be able to participate. When the scheduled meeting occurs on a day, such as the Sabbath, that presents an additional obstacle to attendance to some members for religious reasons, the scope of exclusion widens. In both cases, the exclusion is foreseeable, and applying the principle that a party normally intends the reasonably probable and foreseeable consequences of its actions, it may also be held to be intentional.

Although it is true, as the defendants point out, that the object of the legislation of which § 411 is part was to combat union corruption, allegations of corruption, or allegations that the asserted discrimination was aimed specifically at opponents of those in control of the union, such as the Board of Directors, are not necessary to state a claim under § 411(a)(1). The fact that such allegations are often present does not make them mandatory. There is nothing in the statute itself that imposes that requirement, nor has any case specifically done so. The statute speaks simply of “equal rights and privileges.” It provides a guarantee of open democratic processes as much as a guarantee against entrenched union management.

It is also true, as the defendants argue, that there can be sound reasons to favor committing a decision to amend the By-Laws to an assembly where the resolution can be debated and, perhaps, itself amended. However, those reasons, sound as they may be, would not justify an explicit limitation on which members could attend the meeting at which the debate would take place. Similarly, they cannot justify the functional equivalent of an express limitation, which appears to be the case here.

It also cannot be ignored that the method suggested by the plaintiffs – mail ballot – is not a suspect or inherently unreliable one. It is one that the MNA uses for other business, including the election of officers. Though it would permit only an “up or down” vote on the amendment resolution, that does not appear to be a significant drawback in this case. The amendment at issue is pretty much a “yes or no” proposition: should affiliation with the ANA be discontinued?

If there is one thing the cases seem to agree on, it is that the issues presented by a suit under § 411(a)(1) must be resolved on a case-by-case basis, with the peculiar factual circumstances of each case pointing the way to the proper result. Having considered the broad principles of the statute in the factual circumstances of the present controversy, I conclude that the plaintiffs have established a reasonable likelihood of success on the merits of their claim that the MNA By-Law that requires an vote on a proposed amendment to the By-Laws to be taken only by those in personal attendance at a meeting conflicts with the guarantee of equal participation and voting contained in § 411(a)(1) and is therefore invalid under § 411(b).

By showing a reasonable likelihood that their participation and voting rights are infringed, the plaintiffs have also shown the degree of irreparable harm to justify a preliminary injunction. Though there will be some inconvenience and expense incurred by the MNA as a result of the injunction, the balance tips in favor of the plaintiffs. The public interest – the last factor to be evaluated in deciding whether to issue an injunction – is not notably implicated, except to the extent that the statutory policy of equal participation be vindicated.

For these reasons, the plaintiffs’ request for a preliminary injunction is GRANTED. The defendant MNA is preliminarily enjoined from conducting a binding vote on the proposed amendment to its By-Laws at the March 24 meeting or any other meeting, without provision for an

alternate or supplemental opportunity to vote on the question for members who are disabled by reason of work schedule or religious observance from attending such meeting.

In light of the interests to be vindicated by the injunction, no bond shall be required. See Crowley v. Local No. 82, Furniture and Piano Moving, 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984).

The defendants' motion to dismiss for failure to state a claim is DENIED.

It is SO ORDERED.

DATE

DISTRICT JUDGE